

1911-030 Chancery Causes: John Stapleton vs. J. B. Dillon &
Lee Co.

Whaley - Warren Lumber Co], Martin, Parsons, Yost, Wax,
Benfield, Bledsoe

CA - Contract Dispute
T-Property

-Deed

To the Hon.H.A.W.Skeén, judge of the Circuit Court for Lee County:

Your orator, J.J. Stapleton, a citizen of Lee County, Va., would respectfully represent and show unto your honor, that he was and is now the owner of certain tract of land, lying and being in Lee county, Va. on Rock Lick, and said to contain 77 acres, and being the same land conveyed to him by H.J. Morgan and Daniel Martin; that on these lands there was standing some timber trees suitable for lumber; that on or about the 26th day of September, 1910 by a written contract which is here filed, marked exhibit "A", as a part of this bill, he sold to J.B. Dillon fifty standing trees on said land at the price of \$2.50 per tree; that it was agreed by and between your orator and the said Dillon that the said Dillon should cut, log and manufacture the same into lumber but the lumber so manufactured from said timber should not be ~~the place where sawed into lumber~~ moved from ~~off the premises and lands of your orator~~ until the said timber trees was fully paid, as is shown by said contract, and this was done so that your orator should be safe in getting his money for said timber, and to keep the same in his possession until the same was paid for.

Your orator will further allege and show unto your honor, that he has not been paid for said timber trees or any part thereof but the same is still due and owing to him from the said Dillon; that he is informed and here charges that the said Dillon without the knowledge and consent of your orator sold or made some kind of arrangements with the Whaley-Warren Lumber Company, a ~~foreign~~ ^{domestic} ~~and non-resident~~ corporation, and pursuant to this sale or arrangement with said Dillon, the said Whalley-Warren Lumber Company, without the knowledge or consent of your orator has moved ^{lumber} from off your orator's said lands all the poplar, sawed from said timber, and has engaged some parties, their names not being known to your orator to haul and take away all the balance of said lumber; that they were hauling on it last Friday, the 27th day of January, 1911, and informed your orator that they were going to continue hauling the same away, until the whole was taken away

and off your orator's said lands.

Your orator will further show unto your honor, that the said Dillon, nor any one for him has paid to him the said sum of \$125.00 the purchase price of said timber, nor any part thereof; that the said Whaley-Warren is a non-resident of this State, having an office in Bristol, Tennessee; and that the said J.B. Dillon is absolutely insolvent, and therefore if the said Whaley-Warren Lumber Company be permitted and allowed to take away said lumber your orator will lose his said debt.

Your orator will further allege as is shown from said exhibit "A" his debt was to be paid before the lumber should be removed from the place where it was ^{stacked after} sawed into lumber, and it was ~~sawed~~ ^{placed, and stacked} ~~into lumber~~ upon the premises of your orator, and this clause was placed in said contract so as to leave the lumber so sawed from said timber in the possession of your orator until he was fully paid.

Your orator will further show unto your honor, that if he be required to give the said Whaley-Warrne Lumber Co., and the said Dillon notice of this application for an injunction, they will by that time have all or a material part of said lumber moved from off his preises, and he thereby prossibly deprived of his lien upon the same.

The premises aforesaid considered, your orator is advised he is without relief save in a court of equity; he therefore prays that your honor take cognizance of this his cause of complaint; that the said J.B. Dillon and Whaley-Warrane Lumber Company, a corporation be made parties defendants to this bill of complaint; that they be required to answer the same, but they need not do so on ~~an~~ oath, as that is waived; that an order of publication be posted and published against the said Whaley-Warrne Lumber Company, Incorporated ^{by law} as required ^{by law} for non-resident defendants; that upon a hearing hereof your orator be awarded a perputual injunction, and said Whaley-Warren Lumber Co., J.B. Dillon, their agents and servants be for ever restrained from moving ^{by} and more of said lumbers from

off the premises of said complainant unless he is paid in full his said money and the costs of this suit; that a temporary injunction be awarded to restrain the said defendants from moving any more of said lumber until a hearing of this cause upon its merits; that a judgement be awarded your orator for the said sum of \$125.00, and interest thereon from the 1st day of January, 1911, and the costs of this suit, and the same be decreed to be a lien upon said lumber still on his premises to secure the payment of such judgement. And that all other, further and general relief be awarded him as the nature of his cause may require. And he will ever pray etc.

J. J. Stapleton
Complainant.

Pennington Bros. P.Q.

Virginia,

Lee County, to-wit:-

I, J.M. Howard a justice of the peace in and for the county and State aforesaid, do hereby certify that J.J. Stapleton, the plaintiff in the foregoing bill for an injunction, this day made oath before me in my county aforesaid, that the statements made in said bill are true as he verily believes.

Given under my hand this the 30th day of January, 1911.

J. M. Howard J.P.

This Agreement made and entered
into this the 26th day of September 1910
between J. J. Stopleton and J. B. Dillon
both of Lee County Virginia,
Said Stopleton agrees to ^{sell} said Dillon
50 standing ^{trees} for \$2.50 per tree ~~cash in~~
~~hand~~ said Dillon is to have choice of
any trees except those that stand along
the top of ridge, said boundary ^{of timber} being
on Rock lick on the land that said
Stopleton now owns said Dillon is
to have from now until the first day
of December 1910 to get said timber out
and is to have rightawa to said
timber, said Dillon further agrees
to leave fencing in as good condition
as he finds it in when he commences
work, said Dillon agrees to sell
said Stopleton enough lumber on
stick to bill two houses at \$8.00 per
thousand said lumber is not to reach
on #1 or #2 in grade or quality

The timber is to be paid for before
the lumber is to leave or be removed
from the saw set where the timber
is sawed

Witness our hands and seal,
this Sept 26th. 1910,

Witness P. Bailey,

J. J. Stopleton
J. B. Dillon

J. J. Stapleton & J. B. Dillon

To
Contract

©

Plaintiff's costs	
Witnesses	3.50
N.P.	5.25
attys	15.00
Day	1.50
Sheriff	2.00
Clarks	7.13
	<u>\$34.38</u>

J. J. Stapleton

vs } Bill

J. B. Sillouhal

Filed Jan. 31, 1911.

J. C. T. Ewing,
Clerk.

To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

The answer of the Whaley Warren Lumber Company, a corporation to a bill exhibited against it and others by J.J. Stapleton in this Honorable Court.

Respondent says that it knows nothing of the ownership of the plaintiff of the tract of land in the bill mentioned, nor has it any knowledge whatever in regard to the contract for the sale of the timber off of said land or any other lands by said plaintiff to J.B. Dillon, and in so far as allegation in regard to same are sought to effect respondent strict and legal proof of the same is called for.

Respondent says that it has purchased considerable lumber from one J.B. Dillon, which lumber was taken up by respondent at the mill yards of said Dillon in Lee County, Virginia, but respondent can not undertake to say from whom said Dillon purchased said lumber, and it is very probable that respondent did buy from said Dillon the lumber made from the timber purchased by said Dillon from said Stapleton, if said Dillon did purchase such lumber from Stapleton as is alleged in his said bill. But respondent say that it is not true that *it* purchased said lumber from said Dillon while said lumber was still on the lands of the said J.J. Stapleton, it is not true that respondent removed said lumber or any part thereof from the lands of the said Stapleton. Respondent never bought any lumber from said Dillon which was on the lands of said Stapleton when same was bought and received by it. All the lumber purchased by your respondent from said Dillon was taken up and received upon the saw mill yards *and at the Railroad Station* of the said Dillon which is not upon the lands of the said Stapleton. If said Dillon did purchased timber from said Stapleton and manufacture lumber out of same which he sold to your respondent, the said lumber was mixed with the other large amounts of lumber purchased from Dillon by your respondents on the yards of said Dillon's saw mill, so that your respondent could not possibly tell which of said lumber was manufactured from said Stapleton timber and which was derived from other sources.

Respondent would now show unto your Honor that ~~it~~ purchased the lumber in controversy in this case from J.B.Dillon and paid therefor a valuable consideration; that ~~it~~ had no notice of any lien or claim of any other person upon the same for any amount; that the said ~~written~~ contract between the said J.J.Stapleton and J.B.Dillon, filed with the plaintiff's bill in this cause was not recorded, ^{or docketed} at the time it purchased said lumber and in fact has not been recorded, ^{docketed} up to this date; that the lumber purchased by him had been removed from the lands of the said Stapleton long prior to the time that respondent purchased and received the same, and that it is a purchaser for value without notice of the claim of the said J.J. Stapleton.

Respondent denies that it is a non-resident of the State of Virginia, but on the contrary it is a corporation organized under the laws of the State of Virginia, with its principle office in Bristol, Virginia.

Respondent further alleges that the said lumber in controversy was not in the possession of the said J.J.Stapleton at the time it purchased and received the same but was in the possession of the said J.B.Dillon along with a large amount of other lumber which your respondent also purchased from said Dillon, and that it had no notice whatever before it purchased this lumber from said Dillon that said Stapleton had any contract that said lumber should remain on the saw yard until Dillon had paid for it, or that said Stapleton had any claim upon said lumber or any part thereof, whatever, and it purchased said lumber believing that said Dillon had complete title to same free from the claims of all persons, and paid a full and fair price therefor.

And now having fully answered said bill, and here denying all allegations thereof not herein before specifically explained admitted or denied, your respondent prays that said injunction be dissolved, and that it be hence dismissed with its ~~expenses~~ costs in this behalf expended.

Duncan + Cridler attys.

Whaley-Warren
Dumber-les

add. Husever

J. J. Stapleton

Filed by leave of
Court May 3-1911

H. C. J. Ewing,

Clerk.

J.J.Stapleton.....Complainant.

Vs. In Chancery.

J.B.Dillon and Whaley-Warren Lumber Company, Inc. Defendants.

This cause came on this the 6th day of September, 1911, to be heard upon the bill of the complainant and exhibit filed therewith, the separate answer of said Whaley-Warren Lumber Company, Incorporated, general replication to said answer, the depositions of witnesses, and was argued by counsel.

On consideration of all which and the court being of opinion from the proof in this cause that the said J.B.Dillon is indebted to said complainant for the timbers purchased by him from said complainant as set out in his said bill in the sum of \$125.00, with legal interest thereon from the 1st day of December, 1910, and that said complainant by reason of his contract with said Dillon and the retaining of possession of the lumber manufactured from said timbers had a valid and subsisting common law lien upon the lumber manufactured from said timbers to secure to him the payment of the said sum of money, and that the said Whaley-Warren Lumber Company, Incorporated, with said lien on the lumber manufactured from said timbers, purchased the said lumber from said Dillon, and that the said Whaley-Warren Lumber Company by reason of its said purchase from said Dillon undertook to move said lumber but was herein enjoined from doing so until said sum of money was paid to said plaintiff, and that the said Whaley-Warren Lumber Company, on the 22nd day of February, 1911, executed a bond with C.T.Duncan as its surety thereon, payable to the said complainant in the penal sum of \$250.00 and filed the same in this cause and wherein the said Whaley-Warren Lumber Company bound itself to abide and perform any decree of this court which might be rendered in this cause, it is therefore adjudged, ordered and decreed that the said complainant recover of the said defendants and the said C.T.Dun-

can, surety as aforesaid, the sum of \$125.00, with legal interest thereon from the 1st day of December, 1910, till paid, and the costs of this suit, for which an execution may issue. And the said C. J. Dux can for the Shaley-Har- run Lumber Co. Inc. having paid said sum of money which to day with the costs taxed amount to the sum of \$164.03 the said Shaley-Har-run Lumber Co. is hereby subrogated to the rights of said complainant in this cause. And this cause is stricken from the docket.

J. J. Stapleton

vs } Green

J. B. Hillman et al

Entered in CCB
No 9 page 224tc

Enter this Sept
14th 1901.

H. A. W. Stiles

Whaley Warren Dumber led

In apt with

J. J. Stapleton

Go judge - sent. from 12/1 to 9/6/11

125⁰⁰

sent to 9/6/11

5.65-

Costs Tax & c

3338

1/6.03

===== #
J. J. Stapleton, Complainant. #

Vs. #

In Junction
#

J.B.Dillon & Whaley-Warren Lumber Co. Defts. #
===== #

This cause coming on to be heard in Vacation on this the 30 day of January, 1911 upon the bill of the said complainant duly sworn to, and exhibit filed with said bill.

On consideration of all which, it is adjudged, ordered and decreed that the said defendants, J.B. Dillon, Whaley-Warren Lumber Company, a corporation, their agents, servants and employees be and hereby enjoined and restrained from moving or interfering with any of the lumbers mentioned in the said complainant's said bill until the future order of the court in this cause.

~~xxxxxxxxxxxx~~ But this injunction shall not be effective until the said complainant or some one for him shall execute bond before the clerk of the Court for Lee county in the penal sum of \$250.00, conditioned to pay all damages to the said defendants and to abide the future order of the court in this cause, in case this injunction should be dissolved.

Given under my hand this the 30 day of January, 1911.

H. A. W. Dixon Judge of
the Circuit Court of Lee County.

To H.C.T. Ewing,

Clerk.

J. J. Stapleton

vs } ~~Drew~~

J. B. Villan et al

Entered in C.O.B.
9, Page 107 ve.

J. J. Stapleton Campbell }
vs. } Dr. J. B. Sisson et al. Deft.

On the calling of this
cause, the defendant appear-
ed and filed by leave of the
court its answer, to which
the said complainant replied
generally. And this cause
is continued.

J. J. Stapleton

vs J. S. S. S.
no. 1

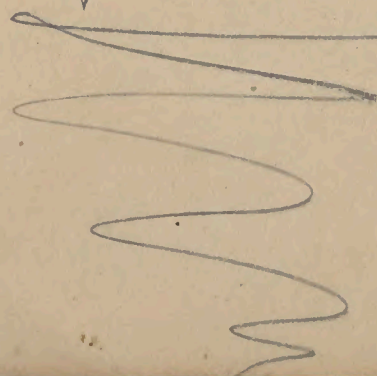
J. B. Silliman et al

Entered in C. O. S.
No. 9, page 147

Enter this

May 3 - 1911

H A W Skene



To Whaley-Warren Lumber Co., and J.B. Dillon:

TAKE notice, that on the 10th day of July, 1911, at the law office of B.W. Pennington, in the town of Pennington Gap, in Lee County, Virginia, between the hours of 9 A.M. and 4 P.M. of that day, I shall proceed to take the depositions of Howard Barnett and others, to be read as evidence in my behalf, in a certain suit in equity depending in the Circuit Court for Lee County, Va., wherein I am plaintiff and you are defendants.

And if from any cause, the taking of the said depositions be not commenced, or if commenced be not concluded on that day, the taking thereof will be adjourned from day to day and from time to time at the same place and between the same hours, until the same shall be completed.

Yours very truly,

J.J. Stapleton.

Pennington Bros. Attys.

*Have Received Notice
of the above
J.B. Dillon*

J.J.Stapleton,

Notice to Take
Vs.
Depositions.

Whaley-Warren Lumber Co.et al.
=====

I hereby accept legal service
of the within notice. This the

21 day of June, 1911.

J.B. Wilson

To Whaley-Warren Lumber Co., Inc. & J.B.Dillon:-

TAKE NOTICE, that on the 10th day of July, 1911, at the law office of E.W. Pennington, in the town of Pennington Gap, in Lee County Virginia, between the hours of 9 A.M. and 4 P.M. of that day, I shall proceed to take the depositions of Howard Barnett and others, to be read as evidence in my behalf, in a certain suit in equity now pending in the circuit court for Lee County, wherein I am plaintiff and you are defendants; and if from any cause, the taking of the said depositions be not commenced, or if commenced by not concluded on that day, the taking thereof will be adjourned from day to day and from time to time at the same place and between the same hours until the same are completed.

Yours very truly,

J.J. Stapleton.

Pennington Bros. P.Q.

J.J.Stapleton,

Notice to Take
-Vs.
Depositions.

Whaley-Warren Lumber Co.et al.

Legal service of the within notice

Is hereby accepted. This the

20th day of June, 1911.

W. T. Amerson

Atty for Whaley-Warren Lumber Co.

J. J. Stapleton, plaintiff. #
vs. #
Whaley-Warren Lbr. Co., #
and J. B. Dillon, Defendants. #

The depositions of J. J. Stapleton, et als. taken before me, J. J. Yeary, a Justice of the Peace in and for Lee County, Virginia, at the law office of E. W. Pennington, in the town of Pennington Gap, on the 10th day of July, 1911, and pursuant to the notices hereto attached, and the depositions are to be read as evidence in behalf of the said plaintiff.

Present: E. W. Pennington, attorney for the plaintiff.

Judge C.T.Duncan attorney for the defendant,Whaley-
Warren Lbr. Co., no one present for defendant,Dillon.

John J. Stapleton after being duly sworn deposes as follows:

Q. What connection, if any, have you in this case?

A. I am the plaintiff.

Q. I hand you a paper marked exhibit "A" with your bill, dated 26th day of September, 1910, and appears to be signed by yourself and J. B. Dillon, please take this paper, examine it, and see whether it is the paper on which you have brought your suit?

A. I have examined the paper and it is the paper on which I have brought my suit.

Q. The paper just handed you purports on its face that you sold to Mr. Dillon fifty timber trees from off your land on Rock Lick, at the price of ^{twelve} (~~\$~~2.50) two dollars and fifty cents per tree. Please state whether under this contract Mr. Dillon cut from off your land the timber trees mentioned in said contract?

A. The trees were all cut at the instance of Mr. Dillon under this contract.

Q. Have you been paid any part of the purchase price of the timber called for in said contract dated September, 26th 1910?

A. No sir I have never received a penny.

Q. At the time you entered into said contract with Mr. Dillon where was the saw mill he was operating located and situated at that time?

A. It was on the lower end of my place.

Q. Was the saw mill, or any part of it, on your land?

A. The whole thing except the boiler was on my side .

Q. Have you a deed to the land on which the saw mill operated by Mr. Dillon was located?

A. Yes I have a deed.

Q. From whom?

A. D. W. Martin and Judge H. J. Morgan. The mill was upon the Martin tract, and the timber sold Mr. Dillon also came off the Martin tract except one tree and that came off the Morgan tract.

Q. You have handed me what purports to be certified copies of the deed to the two tracts of land mentioned by you, why do you present certified copies instead of the original deeds?

A. Before I sold the timber mentioned in the contract dated September, 26th, 1910, to Mr. Dillon I got my house burned with all my papers and deeds and the original deeds of Judge Morgan and Mr. Martin to me were burned. I had had these deeds duly recorded in the Clerk's Office of this County before they were burned and after my deeds were burned I procured from the Clerk of this County certified copies of both my Morgan and Martin deeds, and I herewith file said two copies marked deeds "1" and "2" as a part of this my deposition.

Q. You have said the saw mill of Dillon which sawed the timber which came from off your land, and which he got under said contract dated 26th day of September, 1910, was on the Martin tract of land, please state if you know the boundary lines of your Martin land.

A. Yes sir.

Q. I notice that in the contract dated September, 26th 1910 between you and Mr. Dillon there is this clause in said contract: " The timber is to be paid for before the lumber is ^{to leave} ~~released~~ or to be removed from the saw set where the timber is sawed". Please state your object and intention in having that clause put in said contract?

A. I wanted to be safe in the deal that I made was my main object.

Q. Safe in what way do you mean?

A. I mean safe in getting my money for the timber ¹ let him have.

Q. Was it not your intention by using that clause in this contract to keep possession of the timber, or the lumber that might be sawed from it, in order to secure you in the payment of the purchase price or otherwise?

A. That clause was put in said contract in order that I might keep possession of the property until It was paid the purchase price of it. Mr. Dillon said at the time the contract was entered into that the Company getting timber from him had always paid for the timber before it was cut and moved, but that they might not do so in this, so we put it in the contract as it is expressed therein.

Objection. The foregoing question and answer thereto is objected to because the ^{contract} ~~deed~~ speaks for itself and is the best evidence of the intention of the parties.

Q. Had Mr. Dillon been sawing with the same mill that he sawed the timber coming from off your land any other timber prior to the making of this contract between you and him, if so, what?

A. He had been sawing timber that came from off lands adjoining my lands, and the timber from the other lands sawed by him

E. L. Warren, Pres.

C. C. English, Vice Pres.

Irving Whaley, Secy. & Treas.

Whaley-Warren Lumber Company

INCORPORATED

Wholesale Lumber

Bristol, Va.-Tenn. February 18, 1911.

Mr. J. J. Stapleton,

Monarch, Virginia.

Dear Sir:

The writer was at our lumber yard, near St. Charles, last Wednesday and had all the framing stock, which Mr. Dillon had cut for you, placed in a pile to itself. This stock, as well as the boards, are all ready to be delivered to you and we would like for you to take charge of it at once. By referring to your contract of September 26th 1910, with B. J. Dillon, you will find that you are to take this stock. Will you please let us hear from you by return mail.

Yours truly,

WHALEY-WARREN LUMBER COMPANY, INC.

By Irving Whaley

IW/b

"3"

28
45
174
11
139
27800

E. L. Warren, Pres.

C. C. English, Vice Pres.

Irving Whaley, Secy. Treas.

Whaley-Warren Lumber Company

INCORPORATED

Wholesale Lumber

Bristol, Va.-Tenn. Feb. 20, 1911.

Mr. J. J. Stapleton,
Monarch, Va.

Dear Sir:

Our Mr. Rice will be at the saw-mill going through the Chestnut lumber this week, and it would be best for you to go to the mill and have Mr. Rice measure out the stock that you bought from Dillon to build the two houses. The framing is all piled together and he can measure out the boards for you.

Yours truly,

WHALEY-WARREN LUMBER COMPANY, INC.

By *Whaley*

IW/b

E. L. Warren, Pres.

C. C. English, Vice Pres.

Irving Whaley, Secy. Treas.

Whaley-Warren Lumber Company
INCORPORATED

Wholesale Lumber

Bristol, Va.-Tenn. February 23, 1911.

Mr. J. J. Stapleton,
Monarch, Va.

Dear Sir:

Replying to yours of the 20th. Your contract with Dillon does not read that the framing shall be put on sticks. This framing is dry and is nicely put up in a pile. The boards are on sticks. This stock is also dry. Some of this grade has been taken off of the sticks and dead piled but the stock is dry and in good shape.

Yours truly,

"5"

IW/b

WHALEY-WARREN LUMBER COMPANY, INC.

BY

Whaley

was just about done being sawed at the time I made my contract with him.

Q. Where did you live at the time this contract was entered into with reference to the land on which this timber was situated?

A. I lived at Monarch mines, I guess some five or six miles from the land on which I sold Mr. Dillon the timber.

Q. What has become of the lumber, if you know, that was sawed out of the timber which you sold Mr. Dillon?

A. It has all been moved away except perhaps some cull stuff and some, which it is said, they cut for me.

Q. Who had this lumber moved away from your premises do you know, and tell how you know it?

A. Messrs. Whaley & Warren notified me that they were going to move the stuff and after that, and according to that notice, I went to the place where the lumber was and found a man there, (Mr. Rice) whom they said would be there. What I have just spoken of occurred after the institution of my suit and I herewith file three letters marked "3"4"5" from Whaley-Warren Lbr. Company concerning this matter. But a day or two before I sued out this injunction there were some Bowan boys moving this lumber off my premises, these ~~xxxx~~ Bowan boys when I went to see them about the matter told me that they were directed to move the largest chestnut rick of lumber which had been sawed out of my timber first. Before I saw the Bowan boys they, or some one else, had hauled away a portion of the other lumber sawed out of my timber than that in the big chestnut rick. They had hauled perhaps three thousand ft. of the chestnut. The poplar had all been moved away except some cull boards. These Bowan boys told me they had a contract to move all the lumber out from the saw set, with directions to move the lumber in the largest chestnut rick the first thing. Then after

Oct 13 1910

A Bill of Lumber as follows To Cut Out of Oak

60 Pieces 2 x 8 14 ft Long
12 " 2 x 8 16 " "
60 " 2 x 6 14 ft " "

Oct 31 1910

2. Thousand ft of Baking
10 and 12 inches wide
and 10 ft Long and

50 Pieces 2 x 4 10 ft Long and
24 Pieces 2 x 4 16 ft Long

Exhibit 576 with
J. J. Stapelton's Deposition

$$\begin{array}{r} 4.4258 \\ 3.4175 \\ \hline 10.083 \end{array}$$

seeing them and having this conversation with them it was that I sued out by injunction.

Q. Did you give the Whaley-Warren Lbr. Company, or J. B. Dillon or any other person, your consent to move the lumber sawed from the timber which you sold Dillon from the place where it was sawed in any way.

A. No sir there was never nothing of the kind mentioned to me.

Q. You say that the poplar lumber sawed from your timber was moved away before you saw the Bowan boys, was that done with your knowledge or consent?

A. No sir I did not know it was moved, or being moved, until after it was all gone.

Q. The contract dated September, 26th 1910 between you and Mr. Dillon provides that said Dillon should sell you certain lumber sufficient to build two houses at (\$8.00) eight dollars per thousand. Did you get any such lumber from Mr. Dillon, or any other person on this contract.

A. No sir.

Q. Was any, or all, tendered you in any way?

A. No sir it was not.

Q. Were you not informed by someone that in sawing your timber a little quantity had been laid to one side for you, and if you say ^{it was} ~~you were~~, where was it put and why did you not accept it, if you did not accept it?

A. I furnished Mr. Dillon a bill of the lumber which I wanted to build the two houses mentioned in the contract between us, and I turned over the original of these bills to a Mr. Benfield, but I afterwards saw these bills in the possession of Mr. Yost, Mr. Dillon's sawyer, and I took from these original bills copies and I herewith file these copies marked exhibit "6" as a part of my deposition.

x A few days after the date of the bills of lumber which I

gave to be sawed for framing I was over by the mill and noticed that they had sawed some framing and put it over a fence with the ends resting on the fence. This stuff was not at the time I saw it stuck nor afterwards by either of the defendants, Dillon or Whaley-Warren Lbr. Co. I think sometime this spring someone took it off the fence.

Q. About how much was there of this framing?

A. I think there was some ten or twelve pieces 6x8.

Q. Was there ever laid out and stuck lumber sufficient to build the two houses called for in your contract?

The foregoing question and any answer thereto is~~o~~ objected to because there is nothing in said contract requiring the lumber which Mr. Stapleton was to have having to be stuck.

A. None was ever put down on stick for me. After I got the notice from Whaley-Warren Lbr. Co. that Mr. Rice would be on the ground I went and found Mr. Rice there going through the lumber, he told me what lumber was packed was the framing bill; that as to the boxing he didn't know whether he would get enough of it or not to fill out the bill, but he had another rick to go through. He said he didn't believe he would get enough of boxing to fill the bill.

Q. At any time after this were you ever tendered the lumber called for in your contract to build the two houses, either on or off stick?

A. No sir.

Q. You stated that Mr. Rice told you that the framing piled up was for you on your bill, state whether you examined the framing stuff to which Mr. Rice referred and state its condition and whether there was a sufficient amount of it to fill your bill called for in exhibit "6"?

A. I went to the framing stuff to which Mr. Rice pointed out to me and looked at it and found it in a bad condition, some of it warped, some of it sawed out of heart stuff such as could

not have been used in building the two houses I had contemplated building. I went back and told Mr. Rice at the time that I could not use this framing stuff.

Q. When did this conversation occur between you and Mr. Rice, before or after the institution of this suit?

A. It was after the institution of this suit.

Q. Did you examine the framing stuff that was packed up to ascertain whether it was wet or dry?

A. I did examine it to see the shape that it was in. It had just been thrown about here and there in water and mud, or at least a part of it had. It didn't look like it had been packed up long, and I found it packed in several little piles along the tramway.

Q. Did you find, or was there pointed out to you, any boxing either in ricks, stuck or dead-packed and if so how much and what was its condition?

A. The day I went to see Mr. Rice he pointed out to me a rick of boxing and told me that that was all he had gotten up to that time in going through the lumber; that he didn't believe he would be able to get ^{near} enough to ~~Bill~~ my bill. I did not examine the boxing which he pointed out to me, I told him if I could not get my bill filled I could not use any of it. I told him that the shape the framing was in I could not use it. I think that the framing which Mr. Rice showed me is still on the premises where he showed it to me, or at least it was there the last time I passed by this place a few days ago.

CROSS EXAMINATION by Judge C. T. Duncan.

Q. Did you ever place the contract between you and Dillon for the sale of this timber on record?

A. No sir.

Q. Did you ever show this contract at any time before you instituted your suit to the Whaley-Warren Lbr. Company?

A. No sir.

Q. Did you at any time before you instituted your suit notify the Whaley-Warren Lbr. Co. that you had sold fifty trees to Dillon and that it was not to be removed from the place where sawed until paid for?

A. No sir.

Q. I notice by your contract with Mr. Dillon dated 26th day of September 1910 to which you have heretofore referred, that Mr. Dillon was to have from the date of said contract until the first day of December, 1910, to get said timber out, at any time prior to the first day of December, 1910, did you go to the mill and demand the lumber that you was to have of the trees by said contract for the building of the two houses?

A. Yes I did to Mr. Dillon:

Q. You say you went to Mr. Dillon, where at and when?

A. At St. Charles about the last of October.

Q. Well you hadn't furnished him any bill for a part of the lumber until the last day of October had you?

A. No I had not for the boxing. He told me he would not be ready for it for sometime.

Q. After the 31st day of October, or at any time prior to the first day of December, did you go to the mill to get this lumber, or see whether it was sawed or not, or pay any attention to it whatever?

A. I did: I was over to the mill about the time they were winding up their sawing, and I talked to the sawyer about my bill of lumber. He told me that he had not sawed but very little of the boxing, but that Mr. Dillon said that he thought he could get enough boxing to fill out my bill out of other lumber which had been sawed from other timber when he went through it. The sawyer also told me that there was a few pieces 2x6 and 2x8 that he had not sawed according to the bill:

Q. At any time after the 1st day of December, and before the institution of your suit, did you go to Mr. Dillon at the mill and demand the lumber that you had contracted for in this contract?

A. I did not at the mill before this suit was brought, but I did demand of him the lumber before the suit was brought, but he was not at the mill he was at St. Charles.

Q. When you demanded the lumber from him at St. Charles what was his answer to you?

A. When I talked to Mr. Dillon at St. Charles about this lumber for myself, he told me that the way the Whaley-Warren Lumber Company had treated him he had given it up and turned it over to them; that they would just have to make the best out of it they could. He further said that he guessed the lumber for me was there. This was before the suit was brought and after he had finished sawing.

Q. Did you when you received that information from Mr. Dillon go there and make any investigation of it?

A. After receiving this information from Mr. Dillon I did not go there to look after the lumber in any way until I received the notice before spoken of from Whaley-Warren Lumber Company and then I went as hereinbefore stated.

RE-EXAMINATION by E. W. Pennington.

Q. ~~At~~ At any time did Mr. Dillon, or any other person, give you any notice that he had sawed for you the lumber called for in your bill which you had furnished him?

A. No sir.

And further this deponent saith not.

Attendance one day \$.50.

John J. Stapleton.

John Martin another witness after being duly sworn deposes as follows:

Q. Give your name, age, residence and occupation?

A. My name is John Martin, am twenty-five years old, I reside in the Rocket country on Big Branch and I am digging coal now and have heretofore worked at saw mills.

Q. Are you acquainted with John J. Stapleton and J. B. Dillon?

A. Yes sir.

Q. Did you work any at the saw mill run by Mr. Dillon at Rock Lick during the fall of 1910?

A. Yes I worked there.

Q. At what kind of work?

A. I set ratchets for the saw a part of the time, a part of the time built tramroads.

Q. Do you know the land from which Mr. Stapleton sold Mr. Dillon some timber last fall?

A. ~~XXXX~~ Yes I know the land.

Q. Do you know of Mr. Dillon cutting, or having cut, any timber from off Mr. Stapleton's land during the fall of 1910?

A. Yes sir.

Q. While working at this saw mill ~~xxxx~~ last fall state whether there was ever any directions given by Mr. Dillon to the saw mill crew to cut any building stuff for Mr. Stapleton?

A. They got a bill to cut some framing and boxing for Mr. Stapleton, they cut some of the framing but did not cut any boxing that I know of.

Q. What was done with the framing that was cut for Mr. Stapleton if you know?

A. Part of it was thrown over the fence with one end lying on the fence and the other on the ground, a part of it was thrown up and down the branch and tramtrack and a part of it in the branch.

Q. What kind of framing was it that was thrown along and in the branch?

A. Part 2x4, 2x6 and maybe some 2x8.

Q. Was this framing that was cut and thrown along and in the branch as mentioned by you ever picked up, if so about when and by whom?

A. The last work I did there this stuff was still lying where it had been thrown. I have not been back since to know whether it had been picked up.

Q. State whether any of this framing that was cut for Mr. Stapleton was cut out of stuff that was doty, rotten or the like, or so much so that it would make it of no value?

A. Yes sir there was a part of it cut out of heart and doty logs and it was no account at all at the time it was cut.

Q. Whose land was this timber which came off of Mr. Stapleton's land sawed on?

A. I suppose the carriage of the saw mill set in about the line of Mr. Stapleton, but it was thrown on and packed, what was packed, on Mr. Stapleton's side except a little of the framing which was thrown over on the fence as above stated by me, and that was thrown on Mr. Benfield's land.

Q. CROSS EXAMINATION by Judge Duncan.

Q. Mr. Martin what time did you work for Mr. Dillon at the saw mill?

A. I went about the 2d day of May, 1910, and worked most all the time up to October or November.

Q. Now you say you got a bill of the stuff to be sawed, to whom was this bill furnished?

A. The bill was furnished to the sawyer for the lumber wanted by Mr. Stapleton, I saw it in his possession, I do not know who furnished it to him.

Q. You say they cut a part of the framing for Mr. Stapleton,

what part of it did they cut?

A. They cut some 2x4, 2x8, and 2x6 but not enough of either kind to fill the bill I do not think.

Q. Do you know how many pieces 2x8, 14 ft. long and ~~y~~ 2x6, 14 ft. long was cut?

A. No sir I do not know how many pieces.

Q. Do you know whether any 2x8 16 ft. was cut?

A. I do not remember whether there was or not.

Q. Your business, if I understand you correctly, was simply to set the ratchets?

A. Yes sir.

Q. Do you remember Mr. Martin when this framing was cut?

A. I do not exactly remember, I think a part of it was cut in October.

Q. Where was the timber deposited when hauled to the mill before it was sawed?

A. It was deposited on what I think is the Company's land when hauled to the saw set.

Re-EXAMINATION.

Q. When the timber was sawed on whose land was the lumber sawed from the timber deposited?

A. On Mr. Stapleton's land I suppose, with the exception of a few pieces of framing.

And further this deponent saith not.

Witness claim one day \$.50.

John Martin.

H. Z. Parsons another witness after being duly sworn deposes as follows.

Q. Give your name, age, residence and occupation?

A. My name is H. Z. Parsons, fifty-five years of age, reside

near St. Charles in the Pocket country and am a farmer.

Q. Are you acquainted with J. B. Dillon and J. J. Stapleton?

A. I am.

Q. Do you know the lands which Mr. Stapleton obtained from Judge H. J. Morgan and D. W. Martin near Rock Lick in this County?

A. Yes I am tolerably well acquainted with them.

Q. Before the litigation in this suit begun were you pointed out the lines to the Martin tract in any way by any one in interest?

A. I was not. I have been shown the lines after the suit was begun.

Q. Have you been shown or seen where a saw mill set on Rock Lick on or about Mr. Stapleton's lands, if so about when were you shown where this mill was?

A. I was shown by Mr. Stapleton, but I cannot say just when it was he showed me his lines. This was about the time I was taking a deed of trust on Mr. Stapleton's land.

Q. At the time you were looking over the premises about this saw mill set what did you observe with reference, if anything, to the condition of any framing stuff that was there?

A. When I was there I noticed some framing stuff, a little of it had been thrown over on Mr. Benfield's side with one end of it upon a fence, some of it looked like it had been thrown off in little piles from off the tramcar as it was taken from the saw. It appeared to ~~xxx~~ be thrown off along on the edge of the branch and in the branch, more than one-half of it looked like the water and mud had run over it and it looked like it had been sawed out of dry and rotten stuff, and some of it was considerably warped.

Q. From what you saw of this framing stuff could it have been used for any reasonable building purposes?

A. I do not think it could. I would not want to put it in a building, or at least a very little of it would have been of any account.

Q. Was there any representative of the Whaley-Warren Lbr. Company there at that time?

A. Yes Mr. Rice was there the last time I was there and at the time I looked at the lumber.

Q. Did you hear any conversation between Mr. Rice, the representative of the Whaley-Warren Lumber Company, and Mr. Stapleton concerning this lumber, if so, tell as near as you can what was said between them about the matter?

A. I don't know that I can tell all they said, but I will tell what I remember. Mr. Rice seemed to be very anxious to settle up with Mr. Stapleton and he told him to take that stuff and Mr. Stapleton told him he could not use it in the shape that it was in, and he told him to comply with the contract.

Q. To refresh your memory, do you remember Mr. Rice saying that the little pile of lumber which was pointed out to Mr. Stapleton was all that he had found for boxing, and that he did not believe from what he had to go through yet that he would find a sufficient amount to get up his bill of boxing, or words to that effect?

A. Yes I think I do. Mr. Yost, the sawyer, was there at the time and he said he had not cut the boxing. From the way Mr. Rice and Mr. Stapleton talked I understood that they were trying to go through all of the lumber sawed both from Stapleton's land and the Company's land and out of it get boxing sufficient to fill Stapleton's bill.

Q. How many feet of boxing was there in the pile of boxing pointed out to you?

A. The pile of boxing which was pointed out to me, from the best I remember, I do not think there could have been more than 250 to 300 feet in all.

Q. CROSS EXAMINATION.

Q. Was Mr. Dillon, the man with whom Stapleton made his contract, present on that occasion?

A. No sir.

Q. Did he have any representative there?

A. Not that I know of.

And further this deponent saith not.

Witness claim one day \$.50.

H. Z. Parsons.

James W. Yost, another witness after being duly sworn deposes as follows.

Q. Give your name, age, residence and occupation?

A. My name is James W. Yost, am sixty years old, reside at Rock Lick in Lee County, Virginia and am a farmer.

Q. Are you acquainted with the plaintiff and defendants in this suit, or either of them?

A. Yes sir.

Q. Do you know where the saw mill set was at Rock Lick that sawed lumber for Dillon?

A. Yes sir.

Q. Do you know whether J. B. Dillon cut, or had cut, any timber from off Mr. Stapleton's land during the fall of 1910?

A. Yes sir.

Q. What became of the lumber, if you know, that was sawed from the timber cut from Mr. Stapleton's land?

A. With the exception of some build stuff it was all cut and stuck on Mr. Stapleton's land, the build stuff sawed was also thrown over on Mr. Stapleton's side up and down the branch and along the dump, except a little of it was thrown over on the

fence on Benfield's side.

Q. Did you work any at this mill while Stapleton's timber was being cut?

A. I worked from the beginning of the job until it was completed.

Q. What care, if any, was taken of the build stuff that was sawed for Mr. Stapleton if you know?

A. There was not much care taken at all with it. It was simply sawed and thrown off along the tramway and by the branch, it was crossed and warped a good deal, and every time the branch got up it would overflow and get wet and muddy. There was one or two little piles that the water did not get upon.

Q. About how long did this build stuff remain in the condition described by you?

A. It stayed in that condition from the time we finished sawing, which was on the 18th day of November, 1910, until the winter following when Mr. Rice came out here and had it taken up, and this was after I heard this suit was brought. On the day Mr. Rice was here Mr. Whaley also came and passed by where I was at work and asked me why Stapleton was not taking care of his scantling, or something of that kind. I remember saying I don't know to him. Mr. Whaley went on up the branch a little piece and was gone some five minutes and returned and I said to him as he came back, I guess I know why Stapleton is not taking care of it, he said that the stuff was to be put on stick, Mr. Whaley replied that he had a copy of the contract and it did not say anything about sticking it, but he told Mr. Rice to have it taken up and taken care of and I helped do it.

Q. When you took it up from where it had been lying in what condition did you find it?

A. I found it bad. It had not been packed straight but had been pitched about every way, crossed and warped about, and it was muddy, some of it rotten, but it was rotten when it came from the saw. It was sawed out of doty, heart chestnut. There was a few oak piles along but it was also sawed out of the heart and they generally find the heart in oak doty as well as chestnut.

Q. Mr. Yost at the time you took this lumber up and piled it up at the direction of Mr. Whaley was it in a condition to have been used for building purposes?

A. I think not. I would not want to use it.

Q. Was there any boxing stuff sawed out of the Stapleton timber for Mr. Stapleton?

A. I do not know for certain, I imagine there was a few pieces. I worked around the boiler and engine.

Q. Did you ever hear Mr. Rice, the agent of the Whaley-Warren Lbr. Co., make any statement concerning getting boxing out of their lumber to ^{fill} ~~build~~ Mr. Stapleton's bill, if so, state what he said about it and the result?

A. As I remember sometime in February or March, 1911 and at the time I was doing the work taking up this scantling from out of the branch, as before detailed by me, Mr. Rice told me that he had been directed by the Whaley-Warren Lumber Company to go through there lumber and try to get enough boxing out of it to fill Mr. Stapleton's bill, but he said he did not believe he would be able to get enough to fill it. He had gotten out a small rick for Mr. Stapleton, and while I have not measured it, I don't think there is more than 250 to 300 ft. in this rick of boxing.

Q. How far did Mr. Stapleton live from the mill?

A. I guess the nearest way it would not be more than three or four miles.

Q. How near did you live to the saw set?

A. I guess one-half of a mile.

Q. While working at this mill and sawing the Stapleton timber did you ever notice Mr. Stapleton about the mill, if so, about how often?

A. I reckon while the mill was running I saw him there three

or four ~~times~~ different times.

Q. If you know state whether any of the lumber sawed out of the Stapleton timber was moved away from the mill as it was sawed, if so, what kind?

A. The poplar lumber was moved away from the mill as it was sawed. It may have been there six or eight days, but at any rate it was never stuck.

Q. Do you remember the Bowan boys hauling lumber from this saw set, if so state whether you ever heard either Mr. Whaley or Mr. Warren say for whom the Bowan boys were working?

A. The Bowan boys did haul lumber from this saw set and Mr. Warren stayed at my house and I heard him say the Bowan boys were working for the Whaley-Warren Lbr. Co. I heard Mr. Warren giving the Bowan boys directions from what ricks to haul off of.

Q. Did you ever hear him giving directions about hauling any of the Stapleton lumber.

A. I never heard him giving directions about hauling any of the Stapleton lumber. The directions he was giving was as to the lengths they were to haul.

Q. Do you remember when Mr. Stapleton had the hauling of his lumber stopped, if you say you do what, if anything, did the Bowan boys say their directions were from the Whaley-Warren Lumber Company with respect to hauling the Stapleton lumber? Objection. The foregoing question and any answer thereto objected to because inadmissible. The statements made by the Bowan boys who were hauling lumber would only be hearsay as to the Whaley-Warren Lumber Company.

A. I heard them say they had a contract to haul all that was on the ground, and I am pretty well satisfied that I heard them say they had orders to haul the big chestnut rick and I think the big chestnut rick, or pretty well all of it, came off the Stapleton land.

Q. CROSS EXAMINATION.

Q. What kind of timber came off the Stapleton land?

A. It was chestnut, oak and poplar, not very much poplar, I guess the biggest part of it was chestnut.

Q. About how many poplar trees do you think they got off of it?

A. I do not remember the number of poplar trees, perhaps from five to eight or somewhere along there.

Q. About what time was that framing sawed for Mr. Stapleton?

A. It was during the months of October and November and the cutting of it begun after Mr. Stapleton furnished the bill, which I notice was dated on the 13th day of October.

Q. What was the size of the poplars, large or small?

A. Small.

Q. How about the oak trees, were they large or small?

A. There was some good size oak trees.

Q. Would any of that poplar timber have made boxing ten or twelve in. wide?

A. Yes sir, some of these poplars were right smart size, but they were all on the order of poplar timber.

Q. Do you know how much of the framing stuff 2x8 14 ft., 2x6 14 ft. and 2x8 16 ft. long was sawed?

A. No sir I do not know the number of pieces.

Q. You say this framing was not in condition to be used, was it damaged any before the first day of December?

A. I expect it was.

Q. You say that framing was thrown out along the branch, was there any rain after the 13th of October and the first of December of last fall that would have raised the water sufficient to injure that framing that was thrown along the branch?

A. I do not remember about the rain, but the way it was thrown along the branch and the way the branch was filled with one

thing and another it would not have taken much reain to have caused the branch to run over it.

Q. Isn't it a fact that all of October, or after the middle of the month, and up to the first of December was very cold and very dry last fall, cold weather set in about the 25th of October?

A. I do not remember how this was with any certainty.

And further this deponant saith not.

Witness claim one day \$.50.

James W. Yost.

W. H. Wax another witness after being duly sworn deposes as follows.

Q. Give your name, age, residence and occupation?

A. My name is W. H. Wax, I reside at St. Charles in Lee County, Virginia, am fifty-two years of age and my occupation is farming?

Q. Do you know J. J. Stapleton and J. B. Dillon and the Whaley-Warren Lbr. Company?

A. I have some knowledge of them.

Q. Do you know whether J. B. Dillon had a saw mill on Rock Lick branch in this County in the fall of 1910?

A. Yes sir.

Q. Are you acquainted with Mr. Stapleton's lands?

A. I am pretty well acquainted with them.

Q. On whose land did this saw mill set?

A. I think the boiler was off Stapleton's land, but the saw mill and lumber yard was on Stapleton's land.

Q. Did you have any contract with the Whaley-Warren Lumber Company to haul any lumber from the saw mill set on Rock Lick branch to the railroad, if so state when it was made, with whom and what directions, if any, did you have concerning hauling the

Stapleton part of the lumber sawed at said set?

A. I had a contract with the Whaley-Warren Lumber Company made through correspondence and personal conversation with Mr. Warren to haul the lumber from the saw mill set on Rock Lick branch to the railroad. I do not remember the exact date when I made this contract with Whaley-Warren Lumber Company, but it was some little time before this suit was brought and the lumber enjoined from being moved. I was on the ground at the mill with Mr. Warren talking to him about making this contract to haul this lumber and I told him about Mr. Stapleton having some lumber there on which he claimed a lien because he had not been paid for the timber. Mr. Warren asked me where it was and I showed ~~him~~ it, or a part of it, to him for I had been there working and I knew where the Stapleton lumber had been stuck and there was one big rick stacked close the dump track, but Mr. Warren told me to go ahead and haul it all and as I remember he directed me to first haul out the Stapleton lumber that I had shown him. I did not do any of this hauling, however, for various reasons and so afterwards the Bowan boys hauled the lumber out.

Q. Were you present at this saw set on one occasion when Mr. Rice, the representative of the Whaley-Warren Lumber Company, was there and hear a conversation between him and Mr. Stapleton concerning the Stapleton lumber, if so state what you remember was said between them about the matter?

A. I was there on one occasion when Mr. Rice and Mr. Stapleton were talking and I heard Mr. Rice tell Mr. Stapleton that he would rake up lumber sufficient to fill his bill if he could and he wanted Mr. Stapleton to accept it. I do not remember whether the lumber he had reference to was packed up or was lying along still in the branch. I do know that the lumber was there or had been lying along ^{and} in the branch. I remember Mr. Stapleton telling him that all he wanted was his contract complied with.

Q. What was the condition of the lumber which Mr. Rive wanted Mr. Stapleton to accept on his contract?

A. What I saw along the dump track, that was said to be Stapleton's was in a bad condition and not fit to build ~~a~~ dwelling houses. Some of it might have been used for building a hog pen or something of that kind.

Q. Were you about the saw mill any while they were sawing this Stapleton timber, if so state what became of the poplar timber sawed off the Stapleton land if you know?

A. I was there nearly every day while they were sawing Stapleton's stuff, but I do not remember what became of the poplar.

And further this deponent saith not.

Witness claim one day \$.50.

W. H. Wax.

Harvey Benfield another witness after being duly sworn deposes as follows.

Q. Did you cut or help cut any timber^{coming} off of the J. J. Stapleton land during the fall of 1910, if so, how many trees were cut for Mr. Dillon off Mr. Stapleton's land?

A. I did not cut any of the timber, but overseen the logging of it and I saw that it was cut. There were nine poplar trees, ten oak trees and thirty-three chestnut trees cut from this land making a total of fifty-two.

Q. It has been said heretofore that some of the building stuff sawed for Mr. Stapleton was placed across the fence on your land, state if that be true and who, if anybody, made arrangements with you for that?

A. There was some of it put on my place and the arrangements were made between Mr. Dillon and myself. He told me he wanted to get

leave to put it over there so that he could rick it up for Mr. Stapleton, but none of it was ricked, but Dillon kept saying he was going to have it done but he never did.

And further this deponant saith not.

Witness claim one day \$.50.

Harvey Benfield.

W. M. Bledsoe another witness after being duly sworn deposes as follows.

Q. Give your name, age, residence and occupation?

A. I am twenty-five years old, reside in the Pocket country and am a farmer, I worked principally during the time they were sawing the Stapleton timber. I set ratchets when Mr. ~~Stapleton~~ Martin was not working at that. I helped stack some and I know where most of the Stapleton lumber was packed after it was sawed, and it was packed on his land after being sawed. The lumber they claimed they were sawing for Stapleton was principally dumped along by the side of the branch and on slabs across the branch and the slabs would break down and the stuff went into the branch and a part of it was put over in Benfield's field. A part of the framing was put over on Benfield's land, there was not very much of this, however, none of this lumber that was sawed or claimed to have been sawed for Stapleton, was ricked. And the day that Mr. Stapleton had the moving of this stuff stopped I heard Dillon say that it was in a bad shape, that it was not cut up according to contract; that he was not going to spend any of his money on it for the Company had quit paying the Pay roll, and he was just going to leave it with them; and that he had quit. I was given instructions by Mr. Dillon that in cutting logs when we got it down towards the heart of six or eight inches to

cut that heart into stuff for Stapleton, that he wanted the shipping lumber off of the logs and what came out of the hearts would fill Stapleton's bill by stating that he could get enough that way to fill Stapleton's bill.

And further this deponent saith not.

Witness one day \$.50.

W. M. Bledsoe.

Virginia,

Lee County, to-wit:-

I, J. J. Yeary, a Justice of the Peace, in and for the County of Lee and State of Virginia, do hereby certify that the foregoing depositions of J. J. Stapleton, H. Z. Parsons, John Martin, W. H. Wax, James W. Yost, Harvey Benfield and W. M. Bledsoe were duly taken and sworn to before me for the purpose in the caption mentioned.

Given under my hand this the 10th day of July, 1911.

J. J. Yeary J.P.

J. J. Stapleton

vs Josephine

Whaley. Warren Simler vs

Rec'd. by mail in good
condition & filed July
14th, 1911-

Alex. Ewing, Clerk

Costs of taking these
depositions

Goldie Barton

7 hours 75¢ \$5.25

Witnesses

3.50

\$8.75

KNOW ALL MEN BY THESE PRESENTS that we, Whaley Warren Lumber Company, Incorporated, and C.T. Duncan are held and firmly bound unto J.J. Stapleton in the just and full sum of Two Hundred and Fifty Dollars (\$250.00) for the payment of which well and truly to be made we bind ourselves, heirs and assigns firmly by these presents and as to this obligation we waive the benefit of our homestead exemption. Witness the following signatures and seals, this the 22nd day of February, 1911.

The Condition of the above obligation is such that whereas, the said J.J. Stapleton has filed a bill in the Circuit Court of Lee County, on the Chancery side thereof, and has obtained an injunction, enjoining and inhibiting the Whaley Warren Lumber Company, Incorporated from removing any of the timber or lumber manufactured from the timber purchased by B.J. Dillon from the said Stapleton and sold by the said Dillon to the said Whaley Warren Lumber Company.

Now if the said Whaley Warren Lumber Company shall abide by and perform any decree of the Circuit Court of Lee County which may be rendered in this cause, then this obligation to be void otherwise to remain in full force and virtue.

Whaley-Warren Lumber Co
by C. T. Duncan Atty
C. T. Duncan (Seal)

Duly acknowledge by Whaley-Warren Lumber Co by C.T. Duncan Atty. and by C.T. Duncan in person, this the 22nd day of February, 1911.

H.C. J. Ewing, Clerk.

J. J. Stapleton
vs. Ex Injunction
Bond

Whaley Warren & Co.
Co.

Filed Feb. 22, 1911.

H. C. J. Ewing,
Clk.

22-1000
off

This deed made this 20th day of July 1885, between Daniel W. Martin of the first part, and John J. Stapleton of the second part, both of the County of Lee State of Virginia Witnesseth that in consideration of the sum of one hundred and fifty dollars in hand paid and secured to be paid the receipt of which is hereby acknowledged the said Martin doth by these presents give, grant, bargain, sell and convey unto the said Stapleton a certain tract or parcel of land sposed to contain 50 acres be the same more or less, lying and being in said county on rock Lick the same being a part of the land conveyed by Henry J. Morgan to said Martin and is bounded as follows to wit Beginning at a rock on said Martins line near a branch, thence westwardly up a point to the top of a ridge of the Lone Mountain thence with the top of said ridge as it meanders *the back line on* to the top of the lone mountain near the lost knob, from thence to the top of said lost knob, thence to a dogwood & White oak in a swag on a small ridge & from thence with said Martins line and from thence to a birch and two beeches & from thence with said Martins line to the Beginning. To have and to hold the same with all the appurtenances unto the said Stapleton & his heirs forever, and the said Martin covenants that he will warrant generally the title to the land hereby conveyed, witness the following signature and seal.

Daniel W. Martin (Seal)

Virginia Lee County to wit:

I, Henry J. Morgan a Commissioner in Chancery of the Circuit Court of Lee County the same being a Court of record do certify that Daniel W. Martin whose name is signed to the foregoing deed dated July 20th 1885, has acknowledged the same to be his act and deed before me in the County aforesaid, Given under my hand this 20th day of July 1885.

Henry J. Morgan Comr.

Virginia Lee County court Clerk's office the 22 day of Aug. 1887

The foregoing deed bearing date July 20th 1885, between Daniel W. Martin of the first part and John J. Stapleton of the

second part, both of Lee County Virginia, was this day filed in the office and admitted to record upon the foregoing certificate

Teste: John R. Gibson Clerk.

Virginia, Lee County, to-wit:

I, H. C. T. Ewing, Clerk of the Circuit Court for and in the County and State aforesaid, do hereby certify that the foregoing is a true and perfect copy of a deed from Daniel W. Martin to John J. Stapleton as the same appears of record in my office in Deed Book No. 22, page 417.

Given under my hand, on this the 31st day of January, 1911.

H. C. T. Ewing, Clerk.

John J. Stapleton,
From 3 Deeds.

Daniel W. Martin.

Copy

Fee for copy & Pos.
50¢ paid

This deed made this 20th day of July, 1885, between Henry J. Morgan of the first part, and John J. Stapleton of the second part, both of Lee County, Virginia, Witnesseth that in consideration of the sum of Sixty one dollars 87 cts. the payment of which is herein secured the said Morgan doth by these presents give, grant, bargain, sell and convey unto the said Stapleton a certain piece parcel or tract of land containing 24 3/4 acres be the same more or less lying and being in said county of Lee in the Pocket country & on Rock Lick the same being a part of the Chrisman Land and the same is bounded as follows to wit:- Beginning at a small chesnut on Dan Martins line thence N 60 E 4 poles crossing a branch to a white oak on the east bank of said branch N 2 1/2 E 16 poles to a black & spotted oak N 43 W 15 poles to a gum N 32 1/2 W 19 1/2 poles to a white oak N 14 1/4 W 4 1/2 poles to a Hickory on the point of a ridge N 68 1/2 W 10 1/2 poles to a chesnut N 58 1/2 W 19 poles to a chesnut and maple N 84 W 33 poles to a stake and spotted oak N 70 W 7 poles to a stake N 79 1/4 W 6 1/2 poles to a white oak N 67 W 8 3/4 poles to a gum N 40 1/2 W 8 poles a chesnut & gum N 73 1/2 W 6 poles to a stake on a high point S 78 W 5 poles to a stake N 66 W 9 3/4 poles to a chesnut N 53 1/2 W 14 poles to a small locust on a high point S 64 W 15 3/4 poles to a stake S 53 E 3/4 of a pole to a white oak and dogwood & stake S 55 E 38 poles to a stake in a hollow S 70 E 43 poles to a buckeye and ironwood S 81 1/2 E 11 3/4 poles to a beech N 69 E 9 1/2 poles to a stake in a small branch N 82 E 13 1/2 poles to two beeches and a birch in a bottom opposite the mouth of a hollow & thence S 41 1/2 E 40 1/2 poles to the Beginning. To have and to hold said tract or parcel of land with all its appurtenances unto the said Stapleton and his heirs forever and the said Morgan covenants that he will warrant generally the title to the same and the whole purchase money being yet unpaid the said Morgan hereby reserves to himself the vendors lien on said land until said purchase money is fully paid. Witness the following signature and seal.

Henry J. Morgan (seal).

Virginia, Lee County, to-wit:-

I, John R. Gibson, Clerk of Lee County County Court in the

State aforesaid do certify that Henry J. Morgan whose name is signed to the foregoing deed bearing date July the 20th, 1885, personally appeared before me in the County aforesaid and acknowledged said writing to be his act and deed.

Given under my hand this 20th day of July, 1885.

John R. Gibson, Clerk.

Mr. Stapleton has fully paid me the purchase price of the land set out in the foregoing conveyance.

Henry J. Morgan Aug. 22" 1887.

Virginia, Lee County Court Clerk's office the 22" day of August, 1887.

The foregoing deed bearing date July 20th, 1885, between Henry J. Morgan of the one part & John J. Stapleton of the other part, both of Lee County, Va. was this day filed in this office and admitted to record upon the foregoing certificate.

Teste: John R. Gibson, Clerk.

A copy,

Teste: M. S. Ewing, Clerk.
(D. B. No. 22, page 419 &c.)

Vendor's lien released in margin of deed book.

John J. Stapleton
From } Deed
Henry J. Morgan

Copy

Cluk 50¢ Paid

In the Clerk's Office of the Circuit Court of the County of
Lee, State of Va.

J. J. Stapleton

Plaintiff

against

In Chancery

J. B. Dillon & Whaley-Warren
Lumber Co., a Corporation, Defendant &

This day J. J. Stapleton personally appeared
before me, W. H. Hanary, Deputy for H. D. Ewing, Clerk of the said Court,
and being duly sworn, made oath that Whaley-Warren Lumber
Company, a Corporation
defendant in the said suit is not a resident of the State of Virginia,

Given under my hand as Deputy Clerk of the said Court, this 31st day of Jan'y, 1901.

W. H. Hanary, Deputy for
H. D. Ewing, Clerk.

J. J. Stapleton

VS

AFFIDAVIT FOR ORDER
OF
PUBLICATION

J. B. Dillon,

et al,

Pen. Broz, p. q.

Filed Jan. 31,
1911.

S. C. Fawing,
Clerk.

The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU That you summon *J. B. Dillon and Whaley*
Lumber
Warren Company, a Corporation,

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *first* Monday in *March*, 19*11*, to answer a bill in Chancery, exhibited against *them* in our said court by

J. J. Stapleton.

And have then there this writ. Witness, H. C. T. Ewing, Clerk of our said Court, at the court-house, the *31st* day of *January*, 19*11*, and in the 13*5*th year of the Commonwealth.

a copy,

Teste: H. C. T. Ewing, Clerk.

Bond, with approved security, having been given by the Plaintiff, in the penalty of \$250.00, as required by the order granting the injunction, the defendants, J. B. Dillon and Whaley-Warren Lumber Company, a corporation, their agents, servants and employees, are hereby enjoined and restrained from moving or interfering with any of the lumbers mentioned in the said plaintiff's bill until the future order of the Court in this cause.

Given under my hand, on this the 31st day of January,

1911.

J. F. Geary, Clerk.

J. F. Stapleton

SUBPOENA

vs.

IN CHANCERY.

J. B. Dillon et al,

Pennington Bros. p. p.

To *1st March* Rules,

Circuit Court.

1911

on Feb. 1st 1911

*Executed by
handing J. B. Dillon
a true copy of within
~~enclosed~~ notice, and mailing
a true copy to the
Whaley & Warren
Lumber Co.
Bristow, Tenn*

This Feb 1st 1911

W. C. Hicks Police,

*Sworn to before me
this Feb. 9th 1911*

J. F. Geary J.P.